TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~491.~~ 263

JOSEPH MULHALL, PLAINTIFF IN ERROR,

vs.

THE MERCHANTS AND FARMERS' SAVINGS, LOAN AND TRUST COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

FILED JANUARY 13, 1871.

Dec. 1871

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No. 481.

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1 MISSOURI DISTRICTS, *set:*

Pleas before the honorable circuit court of the United States for the districts of Missouri, at the October term thereof, A. D. 1870.

THE MERCHANTS AND FARMERS' SAVINGS, Loan and Trust Company, plaintiff, *ag'st* JOSEPH MULHALL, DEFENDANT. } Assumpsit.

Be it remembered that, heretofore, to wit, on the second day of September, A. D. 1870, there was filed in the clerk's office of the circuit court of the United States for the districts of Missouri, the following declaration in the above-entitled case, to wit:

Declaration.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri. to the October term, A. D. 1870.

"The Merchants and Farmers' Savings, Loan and Trust Company," a corporation created under an act of the general assembly of the State of Illinois, entitled "An act to incorporate the Farmers Savings, Loan and Trust Company," approved February 19th, A. D. 1857, a citizen of the State of Illinois, and having its principal place of business at the town of Bunker Hill, in the county of Macoupin, and State of Illinois, plaintiff in this cause, by John M. Woodson, its attorney, com-
2 plains of Joseph Mulhall, a citizen of the State of Missouri and a resident of the eastern district of the State of Missouri, defendant, in custody, &c., of a plea of trespass on the case on promises.

For that whereas the said defendant, heretofore, to wit, on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, at Saint Louis, to wit, at the districts aforesaid, in consideration that the said plaintiff would suffer and permit one Thomas F. McEnnis to make and draw overdrafts on the said plaintiff for the period of six months thereafter, or until such time after the expiration of the said period of six months as the said plaintiff might elect, the said plaintiff to give to said defendant at least ten days' notice of the intention of the said plaintiff to settle up the account of the said Thomas F. McEnnis, made his certain guaranty in writing, and which is here now to the court shown, bearing date a certain day and year therein mentioned, to wit, the same day and year aforesaid, and then and there delivered the same to the said plaintiff, in the words and figures following, to wit:

"ST. LOUIS, *April 29th*, 1868.

"Merchants and Farmers' Savings, Loan and Trust Company, Bunker Hill, Ill's, can hold me responsible for Tho's F. McEnnis' overdrafts to the amount of two thousand ($2,000) dollars for the period of six months or until notified to the contrary. You will please give me at least 10 days notice of your intention to settle up his accounts.

(Signed) "JOSEPH MULHALL."

REC. 481—1

And the said plaintiff avers that it accepted the said guaranty in writing, and thereupon opened an account with the said Thomas F. McEnnis mentioned in the said guaranty in writing, and advanced to
3 him moneys at divers and sundry times, after the execution and delivery of the said guaranty in writing, upon the faith and in consideration thereof; and that the said plaintiff, in pursuance of the terms of said guaranty in writing, and in consideration of the obligation and responsibility thereby assumed by said defendant, suffered and and permitted the said Thomas F. McEnnis to make and draw overdrafts on the said plaintiff for a long space of time thereafter, to wit, until the 9th day of April, in the year of our Lord one thousand eight hundred and seventy; at which latter time the said Thomas F. McEnnis had overdrawn on his said account with the said plaintiff a large sum of money, to-wit, the sum of two thousand dollars, on his overdrafts on the said plaintiff, which said sum was paid on the overdrafts of the said Thomas F. McEnnis, as aforesaid, by the said plaintiff; and which said sum the plaintiff further avers has not been paid by the said Thomas F. McEnnis to the said plaintiff, and is now due and unpaid; of all which the said defendant had notice, &c. And thereupon the said plaintiff, unwilling longer to permit such overdrafts of the said Thomas F. McEnnis upon the said guaranty in writing of the said defendant, notified the said defendant of the intention of the said plaintiff to settle up the account of the said Thomas F. McEnnis and of the amount due and unpaid thereon for overdrafts drawn by the said Thomas F. McEnnis on the said plaintiff: And afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, the same being ten days after the said plaintiff had notified the said defendant of the intention of the said plaintiff to settle up the account of the said Thomas F. McEnnis, as the plaintiff further avers, the said plaintiff demanded payment of the sum of
4 two thousand dollars from the said defendant, but the said defendent then and there refused to pay the same.

And the said plaintiff further avers that neither the said Thomas F. McEnnis nor the said defendant has paid to the said plaintiff the sum of two thousand dollars above demanded, nor any part thereof, although often requested so to do, and that by reason of the said failure of the said Thomas F. McEnnis to pay the said sum as aforesaid, and of the promise and undertaking of the said defendant as aforesaid, he, the said defendant, became liable to pay to the said plaintiff the said sum of two thousand dollars above demanded, when he, the said defendant, should be thereunto afterwards requested, &c., as aforesaid. Yet the said defendant, although often requested, &c., has hitherto neglected and wholly refused to pay the same, or any part thereof, and still doth refuse, &c.

Second count.

And also, for that whereas the said defendant, afterwards, to wit, on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, at Saint Louis, to wit, at the districts aforesaid, made his certain other contract in writing, and which is here now to the court shown, bearing date the day and year last aforesaid, and then and there delivered the same to the said plaintiff, which the said plaintiff then and there accepted, by which said contract in writing he, the said defendant, in consideration that the said plaintiff would suffer and permit one Thomas F. McEnnis to make overdrafts on

the said plaintiff for the period of six months from and after date the said twenty-ninth day of April, in the year of our Lord one thou-
5 sand eight hundred and sixty-eight, and until such time thereafter as the said defendant should notify the said plaintiff to the contrary, the privilege of settling up the account of the said Thomas F. McEnnis being left optional with the said plaintiff, at any time after the expiration of the said period of six months; and the said plaintiff to give the said defendant at least ten days' notice of the intention of the said plaintiff to settle up the account of the said Thomas F. McEnnis, when the said plaintiff should so elect, undertook, and then and there promised to become responsible for such overdrafts as might be drawn on the said plaintiff by the said Thomas F. McEnnis to the amount of two thousand dollars, for the said period of six months from and after the said twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and until such time thereafter as he, said defendant, should notify the said plaintiff to the contrary, the privilege of settling up the account of the said Thomas F. McEnnis at any time after the expiration of the said period of six months being left optional with the said plaintiff, and the said plaintiff to give the said defendant at least ten days' notice of the intention of the said plaintiff to settle up the said account of the said Thomas F. McEnnis, when the said plaintiff should so elect.

And the said plaintiff avers that, upon the execution and delivery of the said contract in writing of the said defendant as aforesaid, and in consideration thereof, the said plaintiff opened an account with the said Thomas F. McEnnis and suffered and permitted him, the said
6 Thomas F. McEnnis, to make overdrafts upon the said plaintiff for a long space of time, to wit, from the said twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, until afterwards, to wit, until the ninth day of April, in the year of our Lord one thousand eight hundred and seventy; and the said plaintiff further avers that, on the day and year last aforesaid, overdrafts had been drawn by the said Thomas F. McEnnis on the said plaintiff for a large sum of money, to wit, the sum of two thousand dollars, which were paid by the said plaintiff, which said sum of two thousand dollars the plaintiff further avers has not been paid by the said Thomas F. McEnnis to the said plaintiff, and is now due and remains unpaid; of all of which the said defendant had notice, &c.

And the said plaintiff further avers that, afterwards, to wit, on the tenth day of April, in the year of our Lord one thousand eight hundred and seventy, the said plaintiff having elected to settle up the account of the said Thomas F. McEnnis, notified the said defendant of the intention of the said plaintiff to settle up the account of the said Thomas F. McEnnis as aforesaid, and of the amount due and unpaid thereon, for overdrafts drawn by the said Thomas F. McEnnis on the said plaintiff: And afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, demanded payment of the said sum of two thousand dollars from the said defendant, but the said defendant then and there refused to pay the same.

And the said plaintiff further avers that neither the said Thomas
7 F. McEnnis nor the said defendant has paid to the said plaintiff the said sum of two thousand dollars above demanded, nor any part thereof although often requested so to do. And that by reason of the failure of the said Thomas F. McEnnis to pay the said sum of two thousand dollars above demanded as aforesaid, and of the promise and undertaking of the said defendant as aforesaid, he, the said defendant,

became liable to pay to the said plaintiff the said sum of two thousand dollars, when he the said defendant should be thereunto requested &c., as aforesaid. Yet the said defendant (although often requested, &c.,) has hitherto neglected and wholly refused to pay the same or any part thereof, and still doth refuse, &c.

Third count.

And also, for that whereas the said defendant afterward, to wit, on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight at Saint Louis, to wit, at the districts aforesaid, by his certain other guaranty in writing, and which is here now to the court shown, bearing date the day and year last aforesaid, and then and there delivered by the said defendant to the said plaintiff, and by the said plaintiff then and there accepted, agreed, in consideration that the said plaintiff would accept and pay the overdrafts that one Thomas F. McEnnis might draw on the said plaintiff in the course of his (McEnnis') business, to become responsible for such overdrafts to the amount of two thousand dollars, for the period of six months from and after the date of the said guaranty in writing, or for such time thereafter as the said plaintiff might elect to give the said Thomas F. McEnnis credit upon the said guaranty in writing of the said defendant, giving the said defendant at least ten days' notice of the unwillingness of the said plaintiff further to advance money to the said
8 Thomas F. McEnnis upon the said guaranty in writing of the said defendant. And the said plaintiff avers that overdrafts for a large sum of money, to wit, for the sum of two thousand dollars, were drawn by the said Thomas F. McEnnis in the course of his business, after the execution and delivery of the said guaranty in writing of the said defendant as aforesaid, on the said plaintiff, which the said plaintiff accepted and paid, of all of which the said defendant had notice. And the said plaintiff further avers that the said Thomas F. McEnnis has failed to pay to the said plaintiff the said sum of two thousand dollars, so paid by the said plaintiff on the said overdrafts of the said Thomas F. McEnnis on the said plaintiff: And of the said failure to pay as aforesaid, the said plaintiff afterwards, to wit, on the tenth day of April, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid gave the said defendant notice, and afterward to wit, on the first day of June, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, demanded payment of the said sum of two thousand dollars of the said defendant, but the said defendant then and there refused to pay the same or any part thereof.

And the said plaintiff further avers that neither the said Thomas F. McEnnis nor the said defendant has paid to the said plaintiff the said sum of two thousand dollars above demanded, nor any part thereof, although often requested so to do; and that by reason of the failure of the said Thomas F. McEnnis to pay said sum of money as aforesaid, the said defendant then and there became liable to pay to the said
9 plaintiff the same. And, being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, undertook and then and there promised the said plaintiff to pay the said plaintiff the said sum of two thousand dollars above demanded, when he the said defendant should be thereunto afterwards requested, &c., as aforesaid. Yet the said defendant (although

often requested, &c.,) has hitherto neglected and wholly refused to pay the same or any part thereof, and still doth refuse, &c.

Fourth count.

And also, for that whereas the said defendant, afterwards, to wit, on the twenty-nineth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, at Saint Louis, to wit, at the districts aforesaid, in consideration that the said plaintiff would accept and pay the overdrafts that one Thomas F. McEnnis might draw on the said plaintiff, made his certain other guaranty in writing, bearing date the day and year last aforesaid, and which is here now to the court shown, and then and there delivered the same to the said plaintiff, which was accepted by the said plaintiff, in the words and figures following, to wit:

"SAINT LOUIS, *April 29th*, 1869.

"Merchants and Farmers' Savings, Loan and Trust Company, Bunker Hill, Ill's, can hold me responsible for Tho's F. McEnnis' overdrafts to the amount of two thousand ($2,000) dollars, for the period of six months, or until notified to the contrary. You will please give me at least 10 days' notice of your intention to settle up his account.

(Signed) "JOSEPH MULHALL."

And the said plaintiff avers that overdrafts for a large sum of
10 money, to wit, for the sum of two thousand dollars, were drawn by the said Thomas F. McEnnis after the execution, delivery, and acceptance of the said guaranty in writing of the said defendant as aforesaid, on the said plaintiff, which the said plaintiff accepted and paid, of all of which the said defendant had notice.

And the said plaintiff further avers that the said Thomas F. McEnnis has failed to pay the said plaintiff the said sum of two thousand dollars so paid by the said plaintiff on the said overdrafts of the said Thomas F. McEnnis on the said plaintiff; and of the said failure to pay as aforesaid the said plaintiff afterwards, to wit, on the tenth day of April, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, gave the said defendant notice; and afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, demanded payment of the said sum of two thousand dollars of the said defendant, but the said defendant then and there refused to pay the same, or any part thereof.

And the said plaintiff further avers that neither the said Thomas F. McEnnis nor the said defendant has paid to the said plaintiff the said sum of two thousand dollars, nor any part thereof, although often requested so to do; and that, by reason of the failure of the said Thomas F. McEnnis to pay said sum of money as aforesaid, the said defendant then and there became liable to pay the same to the said plaintiff; and, being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and seventy, at the dis-
11 tricts aforesaid, undertook and then and there promised the said plaintiff to pay the said plaintiff the said sum of two thousand dollars above demanded, when he, the said defendant, should be thereunto afterwards requested, &c., as aforesaid. Yet the said defendant, although often requested, &c., has hitherto neglected and wholly refused to pay the same or any part thereof, and still doth refuse, &c.

Fifth count.

And also, for that whereas the said defendant afterwards, to wit, on the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, at Saint Louis, to wit, at the districts aforesaid, in consideration that the said plaintiff would accept and pay the overdrafts that one Thomas F. McEnnis might draw, to the amount of two thousand dollars, within the period of six then next ensuing after the said twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-eight, on the said plaintiff, made his certain other guaranty in writing, bearing date the day and year last aforesaid, and which is here now to the court shown, and then and there delivered the same to the said plaintiff, (and which was accepted by the said plaintiff,) in the words and figures following, to wit:

"SAINT LOUIS, *April 29th*, 1868.

"Merchants and Farmers' Savings, Loan and Trust Company, Bunker Hill, Ill's, can hold me responsible for Tho's McEnnis' overdrafts to the amount of two thousand ($2,000) dollars, for the period of six months, or until notified to the contrary. You will please give me at least 10 days' notice of your intention to settle up his account.

(Signed) "JOSEPH MULHALL."

12 And the said plaintiff avers that overdrafts for a large sum of money, to wit, for the sum of two thousand dollars, were drawn by the said Thomas F. McEnnis after the execution, delivery, and acceptance of the said guaranty in writing of the said defendant as aforesaid, on the said plaintiff, within the said period of six months after the date of the said guaranty in writing, which the said plaintiff accepted and paid, of all of which the said defendant had notice.

And the said plaintiff further avers that the said Thomas F. McEnnis has failed to pay to the said plaintiff the said sum of two thousand dollars so paid by the said plaintiff on the said overdrafts of the said Thomas F. McEnnis on the said plaintiff; and of the said failure to pay as aforesaid the said plaintiff further avers that the said defendant afterwards, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and sixty-eight, at the districts aforesaid, had notice.

And the said plaintiff further avers that, afterwards, to wit, on the day and year last aforesaid, and at the place aforesaid, the said plaintiff gave the said defendant notice of the intention of the said plaintiff to settle up the account of the said Thomas F. McEnnis for his, the said Thomas F. McEnnis', overdrafts as aforesaid; and afterwards, after the expiration of the space of ten days, to wit, on the first day of June, in the year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, demanded payment of the sum of two thousand dollars of the said defendant, but the said defendant then and there refused to pay the same, or any part thereof.

And the said plaintiff furthers avers that neither the said Thomas F. McEnnis nor the said defendant has paid to the said plaintiff the said sum of two thousand dollars, nor any part thereof, although often requested so to do; and that, by reason of the failure of the said Thomas

13 F. McEnnis to pay said sum of money as aforesaid, the said defendant then and there became liable to pay the same to the said plaintiff; and, being so liable, the said defendant, in consideration of the premises, afterwards, to wit, on the first day of June, in the

year of our Lord one thousand eight hundred and seventy, at the districts aforesaid, undertook and then and there promised to pay the said plaintiff the said sum of two thousand dollars above demanded, when he, the said defendant, should be thereunto afterwards requested, &c., as aforesaid.

Yet the said defendant (although often requested, &c.,) has hitherto neglected and wholly refused to pay the same, or any part thereof, and still doth refuse, &c.

Common counts.

And whereas also, the said defendant afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and seventy, at the place aforesaid, was indebted to the said plaintiff in the sum of twenty-five hundred dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, at the special instance and request of the said defendant; and for other money by the said plaintiff before that time paid and advanced to one Thomas F. McEnnis, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also, the said defendant afterwards, to wit, on the
14 same day and year last aforesaid, and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid; and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of twenty-five hundred dollars, of like lawful money as aforesaid; and, being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, &c.,) has not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of three thousand dollars. And therefore the plaintiff brings suit, &c.

JOHN M. WOODSON,
Attorney for Plaintiff.

Copy of instrument sued upon.

"SAINT LOUIS, *April 29th*, 1868.

15 "Merchants and Farmers Savings', Loan and Trust Company, Bunker Hill, Ill's, can hold me responsible for Tho's F. McEnnis'

overdrafts to the amount of two thousand ($2,000) dollars for the period of six months, or until notified to the contrary. You will please give me at least 10 days' notice of your intention to settle up his accoont.

(Signed) "JOSEPH MULHALL."

Copy of account sued on.

Joseph Mulhall to the Merchants and Farmers' Savings, Loan and Trust Company, Bunker Hill, Illinois, Dr.

1870,

July 1st. For money before that time lent and advanced to him, &c., by said company $2,500

For money before that time paid and advanced to one Thomas F. McEnnis, at the special instance and request of the said Joseph Mulhall. $2,500

For money before that time had and received by him to and for the use of said company. $2,500

For money found due from the said Mulhall to the said company on an account stated between them, & which he promised, &c., to pay, &c..... $2,500

And on said second day of September, A. D. 1870, there was issued out of the clerk's office of the circuit court of the United States for the districts of Missouri the following summons, to wit:

16 *Summons.*

MISSOURI DISTRICTS, *set:*

The President of the United States of America to the marshall of the eastern district of Missouri, greeting:

You are hereby commanded to summon Joseph Mulhall, a citizen of of the State of Missouri, that he be and appear before the honorable circuit court of the United States for the districts of Missouri, on the first day of the next term thereof to be holden at the city of St. Louis, in and for said districts, on the first Monday of October next, then and there to answer unto The Merchants and Farmers' Savings, Loan and Trust Company, a citizen of the State of Illinois, in a plea of trespass on the case on promises, to the damage of said plaintiff of three thousand dollars. Hereof fail not, and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the second day of September, A. D. eighteen hundred and seventy.

Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[L. S.] BEN. F. HICKMAN, *Clerk.*

On which summons, issued as aforesaid, the marshal of the United States for the eastern district of Missouri made the following return, to wit:

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by reading the within summons, together with the copy of declaration thereto attached, to the within-named Joseph Mulhall, at St. Louis, within the eastern district of Mo., September 13, 1870.

C. A. NEWCOMB,
U. S. Marshal.
By GEO. N. STEVENS, *Deputy.*

17 And afterwards, at a regular stated term of the circuit court of the United States for the districts of Missouri, begun and held at the city of Saint Louis, in said districts, on the first Monday of October, A. D. 1870, the following proceedings were had in said case on Monday, the tenth day of October, in said year, to wit:

Default & writ of enquiry ordered.

THE MERCHANTS & FARMERS' SAVINGS, LOAN and Trust Company, plaintiff, *ag'st* JOSEPH MULHALL, DEFENDANT. } Assumpsit.

This day comes the plaintiff, by attorney; and, the defendant having been duly served with process herein, and having failed to appear and answer or plead to the action of plaintiff herein against him in accordance with the rules of this court, and not now appearing, although duly called, makes default, and, on motion of said attorney, it is ordered that the default of said defendant, Joseph Mulhall, be entered of record, which is now accordingly done. And it is further ordered that a writ of enquiry, as to the damages sustained by said plaintiff, be awarded to it herein.

And afterwards, at said last-mentioned term of said circuit court, the following further proceedings were had in said case, on Friday, the fourteenth day of October, in said year, to wit:

Waiver of jury filed.

THE MERCHANTS & FARMERS' SAVINGS, LOAN and Trust Company, plaintiff, *ag'st* JOSEPH MULHALL, DEFENDANT. } Assumpsit.

18 This day come the parties, by their respective attorneys, and file an agreement in writing waiving a jury in the assessment of damages in this case:

Which agreement, referred to in the above order, is as follows, to wit:

Wairer.

MERCHANTS & FARMERS' SAVINGS, LOAN & Trust Co. *vs.* JOSEPH MULHALL, DEFENDANT.

United States circuit court, October term, 1870.

In the matter of assessment of damages the jury is waived in the above-entitled cause.

JOHN M. WOODSON, *Att'y for Pl'ff.*
JECKO & HOSPES & G. B. KELLOGG,
For Def't.

And afterwards, at said last-mentioned term of said circuit court, the following further proceedings were had in said case, on Monday, the thirty-first day of October, in said year, to wit:

Case heard and submitted.

THE MERCHANTS & FARMERS' SAVINGS, LOAN and Trust Company, plaintiff, *ag'st* JOSEPH MULHALL, DEFENDANT. } Assumpsit.

This day come the parties, by their attorneys, and an agreement having been heretofore filed herein waiving a jury in the assess-
19 ment of damages in this case, and said case being regularly called, and both parties being ready, said case was heard and submitted to the court, without the intervention of a jury, for the assessment of damages; and the court, not being fully advised of and concerning the premises, takes time to consider thereof.

And afterwards, at said last-mentioned term of said circuit court, the following further proceedings were had in said case, on Tuesday, the first day of November, in said year, to wit:

Finding of court and judgment.

THE MERCHANTS & FARMERS' SAVINGS, LOAN and Trust Company, plaintiff, *ag'st* JOSEPH MULHALL, DEFENDANT. } Assumpsit.

This day come again the parties, by their respective attorneys; and, this case having been heretofore heard and submitted to the court, without the intervention of a jury, for the assessment of damages, and, being now fully advised of and concerning the premises, the court assess the damages of plaintiff herein at the sum of two thousand dollars and thirteen *costs.*

It is, therefore, now considered by the court that the plaintiff, The Merchants and Farmers' Savings, Loan and Trust Company, recover against the defendant, Joseph Mulhall, the sum of two thousand dollars and thirteen cents, the damages so as aforesaid by the court assessed; and also, the costs in this behalf expended, and that execution be issued therefor.

And afterwards, at said last-mentioned term of said circuit court, the following further proceedings were had in said case, on Saturday, the fifth day of November, in said year, to wit:

20 *Bill of exceptions & appeal bond filed, and supersedeas granted.*

THE MERCHANTS & FARMERS' SAVINGS, LOAN and Trust Company, plaintiff, *ag'st* JOSEPH MULHALL, DEFENDANT. } Assumpsit.

This day comes the defendant, by attorney, and files his bill of exceptions in this case, which, being examined by the court, is signed and sealed, and ordered to be made part of the record herein. And a writ of error having been allowed to the Supreme Court of the United States, and a bond, with sureties, having been executed and approved, as re-

quired by law, it is ordered that a supersedeas be granted staying all further proceeding upon the judgment heretofore rendered in this case.

The bond referred to in the foregoing order, and filed as aforesaid, is in the words and figures following to wit:

Appeal bond.

Know all men by these presents that we, Joseph Mulhall, of the city of St. Louis, Missouri, as principal, and Erastus Wells & Samuel Scaling, of the same place, as sureties, are held and firmly bound unto The Merchants and Farmers' Savings, Loan and Trust Company in the full and just sum of twenty-five hundred dollars, to be paid to the said Merchants and Farmers' Loan and Trust Company or its assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this fifth day of November, in the year of our Lord one thousand eight hundred and seventy.

Whereas, lately, at the October term, 1870, of the circuit court
21 of the United States for the districts of Missouri, in a suit depending in said court between The Merchants and Farmers' Savings, Loan and Trust Company, plaintiff, and Joseph Mulhall, defendant, judgment was rendered against the said Joseph Mulhall, defendant; and the said Joseph Mulhall, defendant, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Merchants and Farmers' Savings, Loan and Trust Company citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Joseph Mulhall shall prosecute said writ to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JOSEPH MULHALL. [SEAL.]
ERASTUS WELLS. [SEAL.]
SAMUEL SCALING. [SEAL.]

Sealed and delivered in presence of—

Approved by—

SAMUEL TREAT, *Judge.*

The bill of exceptions referred to in the foregoing order and filed as aforesaid, is in the words and figures following, to wit:

Bill of exception.

THE MERCHANTS AND FARMERS' SAVINGS, LOAN and Trust Company,
vs.
JOSEPH MULHALL, DEFENDANT.

22 Be it remembered that, on the assessment of damages in the above-entitled cause by the court, without the intervention of a jury, the jury having been waived by the parties, as per stipulation on file, defaults having been theretofore entered:

The court decided that said cause depended wholly upon the construction of the written guaranty of the defendant set forth in the fourth count of plaintiff's declaration, and offered in evidence, as follows being the only guaranty offered. (See page 9 of this transcript.) Thereupon the court decided that said written instrument was upon its face a continuing guaranty, and as such, the defendant was liable thereon for the whole period of the dealings of McEnnis with the plaintiffs beyond six months, and until notice to the contrary was given by the defendant, and rendered judgment for the plaintiffs to recover of the defendant the sum of two thousand dollars and thirteen cents; to which decision of the court defendant then and there excepted, and now presents this his bill of exceptions, and asks that the same be allowed, which is accordingly done. The evidence showed that no notice of intention to hold the defendant liable beyond the six months from the date of said guaranty was ever given the defendant by the plaintiffs until shortly before the close of the account between the corporation and McEnnis, and that defendant gave no evidence of notice to the plaintiffs of a cessation of such liability.

Witness my hand and seal this fifth day of November, eighteen hundred and seventy.

SAMUEL TREAT, *Judge.* [SEAL.]

23 UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of The Merchants and Farmers' Savings, Loan and Trust Company, plaintiff, against Joseph Mulhall, defendant, assumpsit, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said districts, this tenth day of November, in the year of our Lord eighteen hundred and seventy.

[SEAL.]

BEN. F. HICKMAN,
Clerk of said Court.

24 (Indorsed:) United States circuit court, districts of Missouri. The Merchants & Farmers' Savings, Loan & Trust Co., plaintiff, against Joseph Mu'hall, defendant. Duly certified transcript of the record and proceedings in the above-entitled cause.

25 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States, for the districts of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the October term, 1870, between The Merchants and Farmers' Savings, Loan and Trust Company, plaintiff, and Joseph Mulhall, defendant, a manifest error hath happened, to the great damage of the said defendant, Joseph Mulhall, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your

seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this fifth day of November, in the year of our Lord one thousand eight hundred and seventy.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the district of Missouri, dated as aforesaid.

BEN. F. HICKMAN,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

SAMUEL TREAT, *Judge.*

26 In obedience to the within writ of error, I herewith transmit to the Supreme Court of the United States a transcript of the record and proceedings in the within entitled case.

Witness my hand at office, in the city of St. Louis, Missouri, this tenth day of November, A. D. 1870.

BEN. F. HICKMAN,
Clerk of the Circuit Court of the United States
For the Districts of Missouri.

27 The United States of America to The Merchants' and Farmers' Savings, Loan and Trust Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the districts of Missouri, wherein Joseph Mulhall is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, one of the judges of the circuit court of the United States for the districts of Missouri, this fifth day of November, in the year of our Lord one thousand eight hundred and seventy.

SAMUEL TREAT.

28 I do hereby acknowledge service of the within citation this 23d day of November, A. D. 1870.

JNO. M. WOODSON,
Att'y for Defendant in Error.

(Indorsement on cover:) No. 481. Joseph Mulhall, plaintiff in error, vs. The Merchants' and Farmers' Savings, Loan and Trust Company. Missouri C. C. U. S. Filed 13th January, 1871.